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IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. 220

CHESTER F. JACOBS, as County Treasurer of the County of Suffolk, and the County of Suffolk of the State of New York,

Appellants,

v.

WILLIAM ROGERS and ROSE ROGERS, his wife, PACT REALTY CORP. and TOWN OF BABYLON, of the State of New York,

Appellees.

IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. 221

WILLIAM ROGERS and ROSE ROGERS, his wife,

Appellees,

v.

PACT REALTY CORP.,

Appellant,

TOWN OF BABYLON of the State of New York,

CHESTER JACOBS, as County Treasurer of the State of New York, and the County of Suffolk of the State of New York,

Defendants-Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

AMENDMENTS TO "APPELLEES ROGERS" MOTION TO DISMISS OR AFFIRM

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AMENDMENTS TO "APPELLEES ROGERS" MOTION TO DISMISS OR AFFIRM

That the "Appellees Rogers" in their Motion to Dismiss the two appeals in this case ("County Appeal #220") and ("Pact Appeal #221") October Term 1970 among the points in support of said "Motion" Nine in number, is Point VIII entitled

"The case of I. Jack London v. Richard Hammel, New York Court of Appeals 6/15/70"

That at the time that the motion papers to Dismiss or Affirm, pursuant to Rule 16 of this Court were prepared, the only copy of said decision that was available was an unofficial copy obtained from unofficial reports of decisions generally found in Supreme Court Law Libraries of the State of New York, which was used in this case (p. 43).

That it is also stated in Point VIII (p. 42) that at the time the moving papers were prepared (p. 42) that an official certified copy of said decision had been ordered from the Court of Appeals of the State of New York (p. 42) and that upon receipt thereof the original certified copy would be filed with the "Motion to Dismiss" in this Court in lieu of the unofficial decision (p. 43).

That the Motion to Dismiss of the "Appellees Rogers" was filed in this Court on July 24th, 1970.

That on July 30th, 1970, a copy of the foregoing decision, with certification attached (dated July 29th, 1970), was received by the attorney for the "Appellees Rogers".

That the following decision, with certification annexed thereto, is now submitted to this Court to be filed with the original "Motion to Dismiss or Affirm" of the "Appellees Rogers" filed in this Court on July 24th, 1970 in lieu of the aforesaid unofficial decision (p. 43).

Certification.

STATE OF NEW YORK
COURT OF APPEALS,
STATE REPORTER'S OFFICE } ss.:

I, JAMES M. FLAVIN, State Reporter of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of London v. Hammel decided by the Court of Appeals on the 15th day of June 1970, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

IN WITNESS WHEREOF, I have hereunto affixed my signature as State Reporter, at the City of Albany, in the State of New York, this 28th day of July 1970.

JAMES M. FLAVIN,
State Reporter of the State of New York.

(SEAL)

Attest:

L. S. RAYMOND J. CANNON
Clerk of the Court of Appeals.

STATE OF NEW YORK }
COURT OF APPEALS }

I, STANLEY H. FULD, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that RAYMOND J. CANNON is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that JAMES M. FLAVIN is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of

London v. Hammel

decided by the said Court of Appeals on the 15th day of June 1970, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of RAYMOND J. CANNON, as clerk of said court, appended thereto is the true and genuine signature of said RAYMOND J. CANNON, and the signature of JAMES M. FLAVIN, as State Reporter, appended thereto is the true and genuine signature of said JAMES M. FLAVIN.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall in the City of Albany and State of New York on the 29th day of July in the year one thousand nine hundred and seventy.

STANLEY H. FULD,
Chief Judge of the Court of Appeals of the State of New York.

JACK LONDON, Appellant, v.
RICHARD HAMMEL, Respondent.

Decided June 15, 1970.

MEMORANDUM. The order of the Appellate Division should be reversed and the case remitted to Supreme Court, Suffolk County, for the entry of judgment in favor of plaintiff-appellant London on his first cause of action.

Section 52 (subd. 1) of the Suffolk County Tax Act (added by L. 1929, ch. 152, and amd. by L. 1958, ch. 960, § 29) requires, before expiration of the period for redemption of land sold at tax sales, publication of a notice of unredeemed real estate, containing, as provided in section 1014 (subd. 1) of the Real Property Tax Law, "the amount necessary to redeem the same computed to the last day in which such redemption can be made". Section 75 of the Suffolk County Tax Act, authorizing a tax sale purchaser to pay taxes on the property not paid by the owner of record, requires that these taxes, plus interest and penalties, be paid by the owner of record at the time of redemption (see, also, Real Property Tax Law, § 1010, subd. 1, par. [a]). The failure of the County Treasurer to include this additional sum in the published notice, when the payment of taxes by the purchaser was already known to him at the time of publication, is a substantial deviation from the mandate of the statute. The statutory provision, *for the benefit of the owner, should be strictly construed in his favor, even if he may have eventually received notice* of the correct amount by methods *other* than *required by the statute.* The tax deed is, *therefore, void,* and the owner should be permitted to redeem the property. (Cf. *Rogers v. Pact Realty Corp.*, 26 N. Y. 2d 872; *Stebila* v. *Mitrany,* 21 N. Y. 2d 930; *Clason* v. *Baldwin*, 152 N. Y. 204, 209-211.) (emphasis supplied)

Chief Judge Fuld and Judges Burke, Scileppi, Bergan, Breitel, Jasen and Gibson concur.

Order reversed, without costs, and case remitted to Supreme Court, Suffolk County, for further proceedings in accordance with the memorandum herein.

That in addition the heading to Point IX, which was taken from the brief submitted to the Court of Appeals of the State of New York by the Plaintiffs-Respondents (Rogers) in said Court of Appeals, which now reads as follows

"ANY DISASTEROUS RESULTS OF SPECIAL TERM'S DECISION IS NOT THE FAULT OF THE 'PLAINTIFFS RESPONDENTS', BUT IS THE FAULT OF THE TAXING AUTHORITIES OF THE TOWN OF BABYLON AND THE COUNTY OF SUFFOLK," should be corrected to read as follows:

POINT IX

ANY DISASTEROUS RESULTS OF SPECIAL TERM'S DECISION IS NOT THE FAULT OF THE "APPELLEES ROGERS" BUT IS THE FAULT OF THE TAXING AUTHORITIES OF THE TOWN OF BABYLON AND THE COUNTY OF SUFFOLK, OF THE STATE OF NEW YORK.

Respectfully submitted,

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